

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS**

**Call to Order:** By **CHAIRMAN ROD BITNEY**, on March 26, 2003 at 3:15 P.M., in Room 455 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Rod Bitney, Chairman (R)  
Rep. Gary Matthews, Vice Chairman (D)  
Rep. Alan Olson, Vice Chairman (R)  
Rep. Dee Brown (R)  
Rep. Eileen J. Carney (D)  
Rep. Tim Dowell (D)  
Rep. Hal Jacobson (D)  
Rep. Diane Rice (R)  
Rep. Brennan Ryan (D)  
Rep. Jim Shockley (R)

**Members Excused:** None.

**Members Absent:** Rep. Daniel Fuchs (R)  
Rep. Jeff Laszloffy (R)  
Rep. Scott Mendenhall (R)  
Rep. John Parker (D)

**Staff Present:** Glenna McClure, Committee Secretary  
Mary Vandenbosch, Legislative Branch

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HJ 35, 3/20/2003; SB 247,  
3/20/2003, SB 330  
Executive Action: None

**HEARING ON HJ 35**

**Sponsor:** REP. NORMA BIXBY, HD 5

**Opening Statement by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 2.1 - 5.1}***

**REP. BIXBY** said that HJ 35 is an interim study resolution regarding Montana's share of water from the interstate tributaries pursuant to the Yellowstone River Compact. The Compact was approved and ratified in 1950. A commission was formed to oversee the Yellowstone Compact and was to reexamine the water distribution and make recommendations. Montana has not documented the receipt of its lawful share of water, therefore, unable to make recommendation on its fair share of the water. Since 2001 the irrigators on the Tongue River have been impacted due to low levels of water on the Tongue River Reservoir. It is time for Montana to do this study to allow for Montana to receive a fair share of the water.

**Proponents' Testimony:**

***{Tape: 1; Side: A; Approx. Time Counter: 5.1 - 15.8}***

**Daniel Dutton, Farm/Ranch Owner, Belfry,** provided a copy of his written testimony.

**EXHIBIT (feh64a01)**

**Rich Moy, Department of Natural Resources and Conservation,** provided a copy of his written testimony.

**EXHIBIT (feh64a02)**

**Art Hayes, Tongue River Water Users Association,** distributed a map of the Tongue River watershed. He explained that with the rivers drying up, people are realizing the importance of getting a fair share of water. He urged the committee pass this resolution.

**EXHIBIT (feh64a03)**

**Brenda Lindlief-Hall, Attorney, Tongue River Water Users Association,** said that it is important for this study to go forward to determine if Montana is getting its fair share of the water.

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

***{Tape: 1; Side: A; Approx. Time Counter: 15.8 - 21.6}***

**REP. BROWN** asked Mr. Moy if Montana had similar compacts with other states.

**Mr. Moy** said that Montana did not, however, the state has treaty rights on a couple of rivers.

**REP. BROWN** asked about North Dakota.

**Mr. Moy** said that this hasn't ever been an issue with North Dakota.

**REP. BROWN** asked if there was possibility of a new dam in the future in Montana.

**Mr. Moy** said that the likelihood of a new dam is very slim.

**REP. BROWN** asked if drought was the problem.

**Mr. Moy** said it is a big part of the problem.

**CHAIRMAN BITNEY** asked about conducting the study and funding for the study.

**Mr. Moy** said that the Compact is under federal law. Under the law, the state must protect Montana water users. He said that he has \$12,000 in grant money to initiate the study. He said he did not know where the rest of the money would come from.

**Closing by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 21.6 - 24.7}***

**REP. BIXBY** said that there is a great need to do this study. She said that she has written to the United States Congress asking for money to put into the study. There is some money to start the study. She said she hoped that the committee gives this study a do pass.

**HEARING ON SB 330**

**Sponsor:** SENATOR JEFF MANGAN, SD 23

**Opening Statement by Sponsor:**

***{Tape: 1; Side: A; Approx. Time Counter: 24.7 - 30}***

**SEN. MANGAN** said that the intent of this bill is to have the Public Service Commission (PSC) take into account the economic benefits of default suppliers procurement of energy. He said that Commissioner Jergeson will be offering an amendment which he will support.

**Proponents' Testimony:**

***{Tape: 1; Side: B; Approx. Time Counter: 0.3 - 9.5}***

**Jim Mockler, Executive Director, Montana Coal Council**, said that this bill needs to be considered.

**Rhonda Carpenter, Great Falls Chamber of Commerce**, said that they are in support of this bill. She said that people across the state are looking forward to new generation to provide new jobs and economic development.

**Joe Mazurek, Attorney, on behalf of the City of Great Falls**, said that they are in support of this bill.

**Greg Jergeson, Public Service Commission (PSC), appearing on behalf of himself**, said that members of the PSC may have differing opinions regarding this bill. He explained that they are representing their constituents from all areas of the state. He offered some amendments to the bill. He went over the amendments.

**EXHIBIT (feh64a04)**

**Jay Stoval, Public Service Commission**, said that he is a supporter of this bill.

**Opponents' Testimony:**

***{Tape: 1; Side: B; Approx. Time Counter: 9.5 - 25.8}***

**Matt Brainard, Public Service Commission (PSC)**, said that he was in opposition of this bill. He distributed a copy of the existing statute regarding the Public Service Commission.

**EXHIBIT (feh64a05)**

He said that the marketplace must be competitive. He said that the PSC is not an economic development agency. He said that this bill would change the role of the PSC in economic development. He said that Montana is blessed with energy development opportunities. Because there are not enough customers in Montana, much of it would need to be exported. He said that this bill will probably not do what the proponents think it will do.

**Tom Schneider, Public Service Commission**, said that the PSC is split on this bill. He agrees with Mr. Brainard in opposing this bill. He said that they disagree with forcing monopoly customers having to fund projects that they may not otherwise have to bear. He said that projects need to stand on their own. He said that he opposes bogging down the PSC in a legal and technical quagmire that will result in passing this bill. He urged the committee to not pass this bill.

**Ed Eaton, AARP**, said that they also disagree with this bill.

**Informational Testimony:**

*{Tape: 1; Side: B; Approx. Time Counter: 25.8 - Tape: 2; Side: A; 3.3}*

**Bob Rowe, Public Service Commission**, provided a written copy of his testimony that included suggested amendments to the bill.

**EXHIBIT (feh64a06)**

**John Fitzpatrick, Northwestern Energy**, said that this bill creates a tie-breaker to buy from within the state.

**Questions from Committee Members and Responses:**

*{Tape: 2; Side: A; Approx. Time Counter: 3.3 - 5.2}*

**REP. OLSON** asked if the legislative intent of this bill was that the benefit to the consumer was first and that there should be a preference to Montana generated power.

**REP. MANGAN** said that he was correct.

**Closing by Sponsor:**

***{Tape: 2; Side: A; Approx. Time Counter: 5.2 - 8.6}***

**SEN. MANGAN** said that rates have gone up. He said that in the Senate they were told that economic development is already taken into consideration by the PSC and this bill is not needed. He said that it isn't, which is why this language needs to be put in the statute.

**HEARING ON SB 247**

**Sponsor:** SENATOR JOHN COBB, SD 35

**Opening Statement by Sponsor:**

***{Tape: 2; Side: A; Approx. Time Counter: 8.6 - 9.5}***

In the absence of SENATOR COBB, John Bushnell of the Northwest Power Planning Commission distributed a substitute bill from the Senator.

**EXHIBIT (feh64a07)**

**Proponents' Testimony:**

***{Tape: 2; Side: A; Approx. Time Counter: 9.5 - Tape: 2; Side: B; 1.1}***

**Jay Stoval, Public Service Commission,** said that this bill puts a deadline on the process for developing the portfolio of the default supplier. It allows for the preapproval of contracts after 180 days. This bill will help to get new projects in the state.

**Bob Rowe, Public Service Commission,** provided a copy of his written testimony.

**EXHIBIT (feh64a08)**

**John Bushnell, Economist, Northwest Power Planning Council,** said that he is a proponent of the substitute bill that was distributed earlier. Advanced approval does not mean carte blanche approval of projects brought to the Commission for review. Without advance approval the default supplier bears the risk until resource decisions are made which is well after the contract is signed. The default suppliers are reluctant to bear

these risks. They will have more incentive to invest in shorter term contracts to minimize risk. A portfolio including short-term contracts is going to be subject to more market risk than one containing more long-term contracts. Preapproval is needed to assure long-term contracts are included in the default supply portfolio thus mitigating the risk of price volatility to customers. Advance approval also allows for electricity supply from new generation resources to have an equal opportunity in the default supply process. This bill is resource-oriented and gives the Commission two years to review how it works. He recommends a "do pass" on this bill.

**Note:** CHAIRMAN BITNEY indicated that time had expired for proponents' testimony and asked that further proponents state their name and who they represent.

**Pat Corcoran, Vice President, Regulatory Affairs, Northwestern Energy,** said that this bill is needed.

**Debbie Smith, Northern Resource Development Council/Renewable Northwest Project,** said they support the substitute bill.

**Ed Eaton, AARP,** said that they are in support of the amendments.

**Opponents' Testimony:**

*{Tape: 2; Side: B; Approx. Time Counter: 1.1 - 15.6}*

**Matt Brainard, Public Service Commission,** said he is in opposition of the bill. He said that this bill is unnecessary. He said that if there is little or no risk, where is the incentive for them to get it right. He said that the bill should be amended to include a third-party review. He distributed information regarding the state energy policy. He said that he hoped the legislation would set policy to clarify and speed up the process.

**EXHIBIT (feh64a09)**

**Tom Schneider, Public Service Commission,** provided an outline of his testimony.

**EXHIBIT (feh64a10)**

**Patrick Judge, Montana Environmental Information Center,** said that they oppose this bill. They support long-term contracts and stable prices for consumers. He said that they support HB 509. He said that there already was a delicate balance with broad

support. He said that his impression from Northwestern Energy was that they would like to have preapproval, but that they could live without it. He said that the legislature should pass HB 509 and see how it works.

**Informational Testimony:**

***{Tape: 2; Side: B; Approx. Time Counter: 15.6 - 19.5}***

**Greg Jergeson, Public Service Commission**, said that he was opposed to the original bill but is in support of the substitute bill. He said that there may be a need to look at the bill in Section 3, Subsection 9, to make sure that the hiring of consultants is handled properly.

**Questions from Committee Members and Responses:**

***{Tape: 2; Side: B; Approx. Time Counter: 19.5 - Tape: 3; Side: A; 26.5}***

**REP. BROWN** asked the staff person about the bill and the substitute bill and fiscal notes.

**Mary Vandebosch** explained the reason for a substitute bill. She said that the Senate can choose to accept or reject the amendments. If they reject the amendments, both houses may appoint a conference committee. The executive branch will not do a fiscal note until the amendments are engrossed into the bill.

**REP. MATTHEWS** asked Mr. Corcoran how HB 509 was doing in the Senate.

**Mr. Corcoran** indicated that he was not sure where it was in the process. He said that there were questions regarding the amendments.

**REP. MATTHEWS** asked Mr. Corcoran to comment on the timelines and the ability to get long-term contracts.

**Mr. Corcoran** said that the real issue is timing. As a default supplier, they are required to put a plan in place that will lay out all of the elements of the default supply portfolio. The PSC has a set of rules that provides guidance to them as the default supplier to ensure that the process is fair and complete. With the passage of this bill, it will provide investors with confidence to support projects which will provide benefits to customers.



**REP. SHOCKLEY** asked if companies are reluctant to deal with NWE because of the lack of preapproval.

**Mr. Corcoran** said that it is a part of the problem.

**REP. SHOCKLEY** asked about not getting a good deal without preapproval.

**Mr. Corcoran** said that they want to get the best deal for their customers.

**REP. SHOCKLEY** asked Mr. Brainard why the utility company would not have incentive to get the best price.

**Mr. Brainard** said by removing the element of risk it removes the incentive to have a procurement plan that encompasses all of the different types of available resources. He said that it not only affects the price but also the management of contracts.

There were many more questions regarding risk, profit and incentive.

**Closing by Sponsor:**

***{Tape: 2; Side: B; Approx. Time Counter: 26.5 - 28}***

**REP. COBB** closed the bill and asked for a favorable committee report.

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**ADJOURNMENT**

Adjournment: 5:30 P.M.

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REP. ROD BITNEY, Chairman

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GLENNA MCCLURE, Secretary

RB/GM

**EXHIBIT (feh64aad)**